

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POMONA VALLEY HOSPITAL MEDICAL CENTER,)	Case No. 21-RC-166499
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Employer,)	
)	
and)	
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)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION – UNITED HEALTHCARE)	
WORKERS – WEST,)	
)	
)	
Petitioner.)	
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**EMPLOYER’S OPPOSITION TO UNION’S REQUEST FOR REVIEW
OF REGIONAL DIRECTOR’S SUPPLEMENTAL DECISION
AND DIRECTION TO SUSTAIN CERTAIN CHALLENGED BALLOTS
AND TO COUNT THE REMAINING CHALLENGED BALLOTS**

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ATTORNEYS FOR EMPLOYER

I. THE UNION'S REQUEST FOR REVIEW SHOULD BE DENIED

On March 31, 2017, the Union filed its Request for Review of Regional Director's Supplemental Decision and Direction to Sustain Certain Challenged Ballots and to Count the Remaining Challenged Ballots – finding fault in the RD's decision to count 17 additional ballots because the positions which these employees hold are hospital clericals and not business office clericals.

The Union's assertions in support of its position are factually inaccurate and legally flawed. The Board should deny the Union's request to review the RD's Supplemental Decision ("Decision"), because the Decision pertaining to these 17 ballots was based on accurate and complete application of the record using well-reasoned Board precedent.

II. THE BALLOTS OF SEVENTEEN ELIGIBLE VOTING UNIT EMPLOYEES SHOULD BE OPENED AND COUNTED

1. The RD Properly Included Patient-Care Department Clericals

a. Administrative Assistant, NICU: Kimberly Erving (101)

The Regional Director properly ruled that Kimberly Erving's ballot should be counted. Medical department clerks, like the Administrative Assistant, NICU "have generally been found not to be business office clericals." GC 91-4, p. 7; *e.g.*, *Ryder Mem'l Hosp.*, 351 NLRB 214, 218 (2007); *Hollywood Hosp.*, 312 NLRB 1185, 1197-98 (1993); *Lincoln Park Nursing & Convalescent Home, Inc.*, 318 NLRB 1160, 1163-64 (1995).

In its claim that Ms. Erving is a BOC employee, the Union only recites one aspect of her position. She does indeed perform some clerical duties, but that fact does not preclude her vote from being counted, because she works closely with other voting unit employees, interacts with patients' families and works in the main area of the Hospital. *See* General Counsel Memorandum 91-4, p. 5 (business office clericals "are geographically isolated from and have

minimal contact with other employees and patients, are separately supervised, and thus do not share a community of interest with other non-professionals.”)

Ms. Erving works in the main Hospital facility “in the third floor of the Women’s Center, adjacent to the director’s office and adjacent to our patient care rooms including our Neonatal Intensive Care unit and our Labor and Delivery.” (Tr. 141:13-18.) Contrary to the Union’s contention, she interacts with other administrative assistants and other employees who work in the NICU – many of whom are eligible voters. (Tr. 141:19-23.)

She also frequently interacts with patients and their families. The Union’s claim that the witness “could not provide any specific example of this employee actually deal with a patient’s family member,” simply isn’t true. The witness clearly stated that her interaction with patients’ families occurs when there is “a patient complaint or concern or we needed any follow-up, she might be calling -- you know, a patient might, a patient’s family because, of course, these patients are all neonates. A patient’s family might call.” (Tr. 142:13-20.)

She reports to the director of the NICU, to whom a Unit employee, the Specialist, Storeroom NICU also reports. (Tr. 142:8-12.) The nature and location of her duties definitely prove that her “work and working conditions are materially related to unit work.” *Newington Children’s Hospital*, 217 NLRB 793, 695 (1975).

The RD and Hearing Officer found that other Hospital Assistant job classifications - Assistant, Float Pool, Assistant, Day Surgery, Assistant, Emergency Department, Assistant, Food and Nutrition Services, Assistant, Labor Deliver Recovery Postpartum, Assistant, Med/Surg 3, Assistant, Pathology Lab, Assistant, Purchasing, and Assistant, Volunteers - are eligible to vote. (EX 105-110.) Logically, the Administrative Assistant, NICU should be eligible too.

The RD, using the substantial factual evidence presented at the hearing accurately applied Board precedent to hold that Ms. Erving's ballot should be counted. The Union's request for review should therefore be denied.

b. Coordinator, ICU: Rosa Delgado (127)

The Regional Director properly ruled that Rosa Delgado's ballot should be counted. Coordinator classifications, such as the Coordinator, Labor Delivery Recover Postpartum, Coordinator, Emergency Department, Coordinator, Cardiac Services, Coordinator, Mail/Messengers, Coordinator, Physical Therapy, Coordinator, Surgery, and Coordinator, Utilization Management Reporting, have been deemed eligible to vote. (Hearing Officer Report, p. 56., Decision, p. 11.) The ICU coordinator should be eligible as well. *William W. Backus Hospital*, 220 NLRB 414, 415 (1975).

This position is integral to the unit in duties and location. "Her office is in the intensive care unit on the second floor of [the Hospital's] three-story intensive care tower." (Tr. 158:21-22.) Ms. Delgado's interaction with other voting unit employees is frequent and necessary:

- Q. Would Ms. Delgado have to interact with any of the patient care associates, LVNs, patient care support techs, et cetera, as part of her job?
- A. Yes. One of the major parts of her job is every day in our intensive care unit, we do rounds on our patients so our physicians will sit in the intensive care unit, adjacent to the patient rooms, and we discuss the plan of care for each patient with our team which includes our nurses, our physicians, our pharmacists, our respiratory therapists, our social workers. And Ms. Delgado keeps all of the minutes of those interactions, and she enters some data from those rounds for us.

Through these duties, Ms. Delgado supports her unit and, contrary to the Union's claim, performs work that is "materially related to unit work." *Newington Children's Hospital*, 217 NLRB 793, 695 (1975) She reports to the Director of Critical Care, who supervises voting

unit employees, including LVNs, Patient Care Associates, and Patient Care Support Technicians. (Tr. 158:25 – 159:7.)

The Union's argument that Ms. Delgado is a business office clerical because she has no direct patient contact should be rejected. (Report 55). Patient care is not required. See *Lincoln Park Nursing & Convalescent Home, Inc.*, 318 NLRB 1160, 1165 (1995) (employee's lack of involvement in patient care was not determinative of whether she should be included in service and maintenance unit since the unit included both employees involved in patient care and employees not involved in patient care). Medical department clerks like the Coordinator, ICU have, in fact, "generally been found not to be business office clericals." GC 91-4, p. 7; e.g., *Ryder Mem'l Hosp.*, 351 NLRB 214, 218 (2007); *Hollywood Hosp.*, 312 NLRB 1185, 1197-98 (1993); *Lincoln Park Nursing & Convalescent Home, Inc.*, 318 NLRB 1160, 1163-64 (1995).

The RD properly concluded that Ms. Delgado's ballot should be counted. The Union's request for review should therefore be denied.

c. Intermediate Billing Representative: Veronica Garcia (141), Lisa Horvath (142)

The Regional Director properly held that the ballots of the Intermediate Billing Representatives should be counted. Intermediate Billing Representatives "assist[] customers at the pharmacy reception and answer telephones for the department." (Tr. 172:1-3.) Although they primarily work in the Pharmacy, where they interact with Pharmacy Techs and Pharmacists to ensure that shelves are stocked, they also "go up to the floors. They could also go up there to possibly troubleshoot our medication dispensing cabinet if that was an issue." (Tr. 172:8-12, 172:18 -173:5.) Therefore, contrary to the Union's claim, the Intermediate Billing Representative's work is similar to others who work in the Pharmacy. Indeed, these employees often fill in for other Pharmacy employees.

Pharmacy clerks like the Intermediate Billing Representative have generally been found not to be business office clericals. *E.g., St. Elizabeth's Hosp. of Boston*, 220 NLRB 325, 329 (1975) (pharmacy clerk included in service and maintenance unit); *William W. Backus Hosp.*, 220 NLRB 414, 415 (1975) (same). The RD properly relied on *Med. Arts Hosp. of Houston, Inc.*, 221 NLRB 1017, 1018 (1975) in finding that these ballots should be counted. The Union's request for review should therefore be denied.

d. Office Coordinator, LDRP: Desiree Lingenfelter-Chacon (151)

The Regional Director properly ruled that Desiree Lingenfelter-Chacon's ballot should be counted. Coordinator classifications, such as the Coordinator, Labor Delivery Recover Postpartum, Coordinator, Emergency Department, Coordinator, Cardiac Services, Coordinator, Mail/Messengers, Coordinator, Physical Therapy, Coordinator, Surgery, and Coordinator, Utilization Management Reporting, have been deemed eligible to vote. (Hearing Officer Report, p. 56., Decision, p. 11.) The Office Coordinator, LDRP should be eligible as well. *William W. Backus Hospital*, 220 NLRB 414, 415 (1975).

The Office Coordinator, LDRP, is "right in the center of our unit. So at any time she could be called to help with patient care." (Tr. 793: 22-24.) Ms. Lingenfelter-Chacon, works at the Hospital's main facility, at the center of the Labor Delivery Recovery Postpartum unit, surrounded by patient rooms and unit personnel. (Tr. 794:2-9.) Ms. Lingenfelter-Chacon's "function is working with the doctor's offices and scheduling things. But beyond that she also helps not only with patient care when needed. Also she will relieve the patient care support techs for their lunch breaks and functions in their role when they go to break." (Tr. 793:4-8) She reports to the LDRP Clinical Supervisors, as do the Assistant, LDRP, and Coordinator, LDPR – both of whom are eligible voters. (Tr. 792:18-24.)

The Union contends that because this employee performs financial tasks, she should be excluded from the unit. An employee's performing financial tasks, however, does not preclude her inclusion in a service and maintenance Unit. *E.g., St. Luke's Episcopal Hosp.*, 222 NLRB at 677 (billing clerks having contact with nonprofessional employees included in nonprofessional unit); *Baker Hosp.*, 279 NLRB at 309 (outpatient billing clerk and outpatient billing clerk/admitting included in nonprofessional and technical unit "because of their significant, work-related contact with unit employees"); *Rhode Island Hosp.*, 313 NLRB at 361-62 (billing employees and emergency department billing clerks included in nonprofessional unit).

The RD properly recognized that this position's frequent interaction with other unit employees and regular patient contact renders her eligible to vote. Ms. Lingenfelter-Chacon's ballot should be counted and the Union's request for review should be denied.

e. Applications Specialist Pharmacy: Randy Walker (181)

Applications Specialist Perioperative Services: Theresa Bangunan (182)

Contrary to the Union's contention, the RD fully considered this position's work location and job duties when holding that Mr. Walker's and Ms. Bangunan's ballots should be counted. The Hospital's Applications Specialists Pharmacy works side by side with Pharmacy Technicians - all of whom are eligible to vote. (Decision, p. 10.) Mr. Walker works in the Hospital's main facility and reports to the Director of Pharmacy, who supervises the Pharmacy Techs - a position which Mr. Walker previously held. "By training, he is a pharmacy technician." (Tr. 181:1-9, 13.)

Now, Mr. Walker trains the Pharmacy Techs, helping them navigate the Hospital's complex medication dispensing systems. "He trains them on any of the systems. He helps them troubleshoot anything related to either our medication dispensing cabinets or any

other software in the pharmacy.” (Tr.181:16-18.) He “[s]upports the development implementation, monitoring, testing, and ongoing maintenance and upgrades of pharmacy-related applications, clinical information systems, and computerized pharmacy systems and hardware. Supports resolution of all general computer-related issues within the pharmacy department.” (Tr. 180:16-22.)

Ms. Bangunan performs the same work in the perioperative unit, which is “everything encompassing a patient having surgery. It starts off from when they first come in to have their surgery all the way until they go to the recovery room, and we discharge them home.” (Tr. 182:2-5.) “She does training on the system. She provides access as far as passwords and updating any access issues that people might have to get into the surgery information system.” (Tr. 193:12-15.) She trains, “RNs, LVNs, scrub techs, nurses’ aides [and] patient care associates.” The Director of Perioperative Services supervises this position and all of the individuals with whom Ms. Bangunan works. (Id. at 182:6-11.) The training coincides with diagnostic, laboratory and technical services performed by other voting employees. *Silver Cross Hospital*, 250 NLRB 114 (2007).

These facts support a strong community of interest with other voting employees and more than explain how the Application Specialists’ “work and working conditions are materially related to unit work.” *Silver Cross Hospital*, 250 NLRB 114 (2007); *Med. Arts of Houston*, 221 NLRB 1017, 1018 (1975). Their duties are precisely the type of diagnostic, laboratory and technical services performed by technical employees in the healthcare arena.

The RD properly concluded that Mr. Walker’s and Ms. Bangunan’s ballots should be counted. The Union’s request for review should therefore be denied.

2. The RD Properly Included the Hospital's Greeters

Hospitality Desk And Parking Ambassadors: Maria Jimenez (152), Hortensia Machorro (153), Tatiana Navarro (154), Angelica Perez (155), Rosemary Rojo (156), Virginia Wilkerson (157)

The Regional Director properly ruled that the ballots of the Hospital Desk and Parking Ambassadors should be counted. The RD's finding that "a significant portion of their job involves greeting patients and their guests..." is entirely accurate and supported by the record. Indeed, the greeting component of their job is highlighted throughout the job description. "Greet all drivers of vehicles entering the parking lot, greets all customers entering the lobbies, provides information quickly and courteously for customers requesting the following: Parking availability, location of hospital services or events, directions to lost motorists. Maintains visitor control and issues visitor badges, protects all hospital buildings, assets and premises as assigned." (Tr. 449:23-25, 450:1-4.) They "work at the front desk, at the entrance points to the Hospital and they work in the entry booths off of the major streets coming into the facility." (Tr. 450:10-12.)

The Hospitality Desk and Parking Ambassadors were properly included in the Unit by the RD on account of their frequent interaction with Unit personnel and patients. The RD properly found that, "unlike BOC's, they are not geographically isolated, and do not handle finances, billing, or similar duties." (Decision, p. 9; *Lincoln Park Nursing Home*, 318 NLRB 1160 (1995).)

The RD accurately described these employees as greeters, because that is what they do. This primary responsibility involves direct patient and voting unit member interaction on a nearly constant basis during the workday.

Contrary to the Union's claim, these employees are not statutory guards because they do not enforce Hospital security policies or nor do they patrol Hospital grounds. *C.f. Rhode*

Island Hosp., 313 NLRB 343, 345-47 (1993). Moreover, the Union is precluded from raising this issue since it never previously claimed that the Hospital's greeters were statutory guards: "Petitioner argues that this is a BOC." (Hearing Officer's Report, pg. 65.) *Concrete Form Walls Inc.*, 346 NLRB No. 80 (2006) ("Of course, once a ballot is cast without challenge any argument as to that individual's eligibility to vote is forever waived."); see also, NLRB Rules and Regulations Section 102.67(e) "Such request [for review] may not raise any issue or allege any facts not timely presented to the Regional Director." This waiver renders the Union's argument moot.

The RD's reliance on *Lincoln Park*, 318 NLRB 1160 (1995) to include this position is apt. The front desk agents at Lincoln Park performed largely the same duties as the Hospital's greeters, "greeting visitors when they enter[ed] the facility...and requesting that they sign a register." *Id.* at 1164. Hospital greeters also "maintain[] visitor control and issue visitor badges" after visitors sign in at the front desk. (Tr. 450:2-3.) While the Hospital greeters also work at various parts of the Hospital's grounds, their function remains the same – greeting people.

The RD therefore properly concluded that the ballots of the Hospitality Desk and Parking Ambassadors should be counted. The Union's request for review should be denied.

3. The RD Properly Included the Hospital's Coordinator, Volunteers

Lindsey Medina (34)

Like the Coordinator, Labor Delivery Recover Postpartum, Coordinator, Emergency Department, Coordinator, Cardiac Services, Coordinator, Mail/Messengers, Coordinator, Physical Therapy, Coordinator, Surgery, and Coordinator, Utilization Management Reporting – all of which were found eligible to vote – the Coordinator, Volunteers position should be included in the unit. *William W. Backus Hospital*, 220 NLRB 414, 415 (1975). The

Regional Director properly found in accordance and ruled that Lindsey Medina's ballot should be counted.

Ms. Medina works at the Hospital's main facility in "the volunteer office which is located in the front of the Hospital," not outside the Hospital, as the Union claims. (Tr. 658:15-20.) She interacts with other Hospital employees including LVNs, "daily," going wherever Hospital volunteers go since she is their primary instructor. (Tr. 659:3-5.) The RD properly concludes that "because the work of volunteers is related to patient care, then, by extension, the work of the Coordinator, Volunteer is related to patient care." (Union's Request for Review, p. 29.) Indeed, this position is instrumental in patient care since, on a daily basis, she instructs volunteers on how best to interact with Hospital patients. (Tr. 659:3-11.) The Union comparison to Billing Clerks is preposterous.

The Union tries to find fault in the RD's reliance on *Buffalo Gen. Hosp.*, 218 NLRB 1090, 1092 (1975) instead of *Seton Medical Center*, 221 NLRB 120, 122 (1975) in reaching this conclusion. The facts in *Seton* simply do not align with those in this case. The union acknowledges that the *Seton* decision addresses the exclusion of clerical employees. (Union Request for Review, p. 30.) Ms. Medina is not a clerical employee. She works with Hospital volunteers in the units in which they work, thereby interacting with the patients and employees who reside in those units.

The Union's brief is silent as to the RD's *Rhode Island Hosp.*, 313 NLRB 343, 349 (1993) citation, for good reason. In *Rhode Island*, the Board held that a community relations department coordinator, who screened student applicants and scheduling their physical examinations, should be included in a nonprofessional unit. That employee's duties were similar to those of the Coordinator, Volunteer. As a result, the Union's attempt to distinguish the RD's cited findings fails.

The RD properly concluded that Ms. Medina's ballot should be counted. The Union's request for review should therefore be denied.

4. The RD Properly Included the Hospital's Specialist, HIM Data Integrity

Cleo Bretado (61), Heidi Martinez (62), Adrienne Wilson (63)

"The Employer argues that Specialists HIM Data Integrity Cleo M. Bretado (61), Heidi A. Martinez (62), Adrienne B. Wilson (63), whose jobs is to correct data on patients' health records were misclassified [by the Hearing Officer] as BOCs. I agree." Decision, p. 10. Regardless of a typo that appears on page 6 of the Decision (the Union falsely claims that the RD's generalized discussion of "Medical Records Clericals" involves HIM Data Integrity Specialists), the RD's finding is clear: medical records employees like these Specialists are hospital clericals, not BOC.

The RD accurately found that HIM Data Integrity Specialist primarily ensure the accuracy of patient records and do not handle patient billing or insurance. "Responsible for ongoing monitoring and repair of patient identity issues, duplicate medical record numbers and patient overlays. Actively collaborates with end users to resolve issues and ensure appropriate EHR and EDM documentation errors are corrected." (Tr. 487:18-22.) When errors are discovered in patient records, these employees manually alter them in the Hospital's records management systems. "If a patient is misidentified, an example would be a father and son with the same last name, with the same name, full name, come into the hospital or one of them come into the hospital and upon registration, the incorrect patient is chosen. And information is placed into that record. Their responsibility is to desegregate those records and put them in the appropriate medical record electronically." (Tr. 848: 13-19) "It could be identified by the nursing personnel as they're treating the patient and the date of birth says 9/18/56 but the patient definitely doesn't look to be that old. Could be 9/18/75. Then they would contact -- the nursing

personnel would contact the data integrity specialist and say that they 1 have a potential identity issue.” (Tr. 848: 22-25, 849, 1-2) To do this, they work closely with Admitting Clerks, since errors often come to light during patient registration. (Tr. 848:12-19, 849:3-6.)

The Union admits that HIM Data Integrity Specialists do not handle insurance issues. (Union Request for Review, p. 32.) They are medical records employees – ensuring the accuracy of patient information, a position that is not BOC. *Rhode Island Hosp.*, 313 NLRB 343, 345-47 (1993)

Moreover, the duties of a HIM Data Integrity Specialist are remarkably similar to those of a HIM Imaging Technician – a voter eligible position. (Tr. 848:10-11.) Like the HIM Imaging Technician and other records management employees, HIM Data Integrity Specialists work in the Hospital’s main facility.

The RD properly concluded that HIM Data Integrity Specialists’ ballots should be counted. The Union’s request for review should therefore be denied.

III. CONCLUSION

For the foregoing reasons, Union has failed to establish any of the grounds for granting review to the Supplemental Decision and Direction to Sustain Certain Challenged Ballots and to Count the Remaining Challenged Ballots. Accordingly, review should be denied.

DATED: April 7, 2017

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POMONA VALLEY HOSPITAL MEDICAL
CENTER

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is One Wilshire Boulevard, Suite 2000, Los Angeles, CA 90017-3383.


On April 7, 2017, I served true copies of the following document(s) described as **EMPLOYER'S OPPOSITION TO UNION'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND DIRECTION TO SUSTAIN CERTAIN CHALLENGED BALLOTS AND TO COUNT THE REMAINING CHALLENGED BALLOTS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

- ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address e.livermont@mpglaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 7, 2017, at Los Angeles, California.


Jon C. McNutt

SERVICE LIST

Pomona Valley Hospital Medical Center v. SEIU – UHWW
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